



# Diocese of Wheeling-Charleston

Department of Catholic Schools

Mr. James G. Fuerhoff  
VIA EMAIL DELIVERY:  
James.Fuerhoff@WVSTO.com

March 11, 2022

**Re: WRITTEN COMMENTS TO EMERGENCY LEGISLATIVE RULE  
TITLE 112, SERIES 18 – HOPE SCHOLARSHIP PROGRAM**

Mr. Fuerhoff:

The following written comments to the Emergency Legislative Rule, Title 112, Series 18 of the West Virginia Code of State Rules, Hope Scholarship Program (the “Emergency Rule”), are submitted, in response to that certain Notice of Public Comment Period inviting public comment on the Emergency Rule. These comments are submitted by the Department of Catholic Schools of the Diocese of Wheeling-Charleston (the “Department of Catholic Schools”).

## **I. Background**

The Roman Catholic Diocese of Wheeling-Charleston covers the entire State of West Virginia and operates (through its individual Parishes in most cases) eighteen Catholic primary schools (including both K-5 and K-8 buildings) and six Catholic high schools (each individually a “Catholic School” and together “Catholic Schools”).<sup>1</sup>

Catholic Schools are committed to providing quality education for their students in the Catholic tradition and in a nurturing Christ centered environment. They endeavor to challenge students and encourage them to reach their full potential by recognizing, developing, and sharing the gifts that they have received from God. Saint John Paul II said that “Catholic education aims not only to communicate facts, but also to transmit a coherent, comprehensive vision of life, in the conviction that the truths contained in that vision liberate students in the most profound meaning of human freedom.” West Virginia’s Catholic Schools seek to realize that vision in the pursuit of well-formed and well-rounded young people grounded in the truth and committed to the common good.<sup>2</sup>

## **II. Stakeholder**

West Virginia’s Catholic Schools are independently accredited and operate under exemption (k) (W.Va. Code § 18-8-1). Attendance at Catholic Schools satisfies the compulsory school attendance requirement for children under West Virginia law.

<sup>1</sup> A complete list of all of West Virginia’s Catholic schools can be found at [wvcatholicschools.org](http://wvcatholicschools.org).

<sup>2</sup> Address of the Holy Father Pope John Paul II to the Bishops of the Ecclesiastical Regions of Chicago, Indianapolis, and Milwaukee (USA) on Their “Ad Limina” Visit, May 30, 1998.

Catholic Schools are organizations that would be eligible under W.Va. Code §§ 18-31-1 et. seq., and under the Emergency Rule, to seek the approval of the Hope Scholarship Board (W.Va. Code § 18-31-3) to receive Hope Scholarship funds for providing education services to Hope Scholarship students. It is in this capacity, as potential Education Service Providers, that the Department of Catholic Schools, speaking for, and on behalf of, West Virginia's Catholic Schools, submits the following comments to the Emergency Rule.

### **III. Written Comments**

The Department of Catholic Schools applauds the efforts of the Hope Scholarship Board with respect to the preparation of the Emergency Rule. The administration of a new program covering a host of operational issues is a monumental task, particularly in the first operational year, and the Emergency Rule makes significant progress in clarifying elements of the program for Hope Scholarship Students, Account Holders, and Education Service Providers.

With a cooperative spirit then, and in the hope that these comments may be of assistance to the Hope Scholarship Board, the Department of Catholic Schools states as follows:

#### **1. § 112-18-11.3.1.d**

The Emergency Rule provides, in § 112-18-11.3.1.d, that:

“Prior to receiving Hope Scholarship Funds, an education service provider must sign a contract with the Board, agreeing to the following: ... 11.3.1.d That the provider will not engage in unlawful discrimination in providing education services to Hope Scholarship students[.]”

This provision is unclear and may lead to unnecessary confusion with respect to the obligations of Education Service Providers in that (i) it does not specify what constitutes “unlawful discrimination” and (ii) it creates confusion as to what activities of an Education Service Provider might be included “in providing education services to Hope Scholarship students[.]”

#### **i. *What Constitutes Unlawful Discrimination***

In the first instance, what may be unlawful in public schools may not be unlawful in parochial institutions. For example, a parochial school may require adherence to an honor code, moral standard, or other set of rules that correspond to the teachings of a particular faith, whereas such a mandatory faith based standard may not be permitted in public schools. Similarly, parochial schools may have sex specific uniform requirements that might be considered discriminatory in a public setting; or they may give preference in admissions to members of a particular religious faith; or they may incorporate prayer and religious instruction in a fashion that would be considered discriminatory in public schools.

These activities do not constitute unlawful discrimination in a parochial school environment – in fact they are part of a fabric of actions, policies, and behaviors that ground daily life and the educational experience in the teachings of a faith tradition. This grounding of education in faith is one important distinguishing factor between parochial schools and their public counterparts. Hope Scholarship Students that choose to attend parochial schools will be choosing this environment, but the language of § 112-18-11.3.1.d of the Emergency Rule may lead Hope Scholarship students to be confused with respect to the governing principles of their parochial schools. Obviously, parochial schools will abide by the law as it applies to each of them, but the blanket reference to ‘unlawful’ conduct leaves room to

confuse conduct that would be unlawful for a public school with standards that apply to parochial institutions and for this reason the language is unclear.

ii. *What is included in 'providing education services to Hope Scholarship Students?'*

In the second instance, the current version of § 112-18-11.3.1.d of the Emergency Rule precludes 'unlawful discrimination' in "providing education services to Hope Scholarship students[.]" It is not clear what operations of an Education Service Provider might be involved in "providing education services to Hope Scholarship students[.]"

How closely tied to a student must a requirement, policy, action, or procedure of a parochial institution be before it might be deemed to be involved in "providing education services to Hope Scholarship students[.]" For example, in Catholic Schools our teachers are ministers of the Catholic faith with specific responsibilities related to teaching our faith and modeling its tenets to create an educational environment that is grounded in our Catholic faith. As presently written in the Emergency Rule, it is not clear whether § 112-18-11.3.1.d might apply to hiring matters for teachers and staff, or employee conduct policies. In another example, Catholic Schools display religious symbols and statements grounded in the Catholic faith in the design and décor of their buildings. § 112-18-11.3.1.d could create confusion over whether decorations or the display of religious symbols might be involved in "providing education services to Hope Scholarship students[.]"

iii. *Proposed Revision of the Emergency Rule*

The Department of Catholic Schools does not believe that § 112-18-11.3.1.d was intended to disrupt any of these practices by parochial Education Service Providers, in fact, West Virginia Code § 18-31-11(d) specifically guarantees that "[a] participating school or education service provider is not required to alter its creed, practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose parents pay tuition or fees from a Hope Scholarship[.]" Instead, the Department of Catholic Schools believes that § 112-18-11.3.1.d is a reference to W.Va. Code § 18-31-11(a)(4) which requires that Education Service Providers "[c]ertify that [they] will not discriminate on any basis prohibited by 42 U.S.C. 1981." 42 U.S.C. § 1981 states (in relevant part):

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

To eliminate confusion, ensure that the Emergency Rule remains consistent with West Virginia Code § 18-31-11(d), and to permit the participation of parochial schools in the Hope Scholarship Program, the Department of Catholic Schools recommends two changes to the Emergency Rule.

First, the Department of Catholic Schools recommends revising W.Va. C.S.R. § 112-18-11.3.1.d to read as follows:

**"11.3.1.d That the Provider will not discriminate on any basis prohibited by 42 U.S.C. 1981."**

Second, the Department of Catholic Schools recommends inserting clarifying language into the Emergency Rule that refers to the guarantees of West Virginia Code § 18-31-11(d) ensuring that neither the Emergency Rule, nor the contract with providers referenced in W.Va. CSR § 112-18-11.3, may be construed to require a participating school or Education Service Provider to alter its creed, practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose parents pay tuition or fees from a Hope Scholarship.

**2. W.Va. C.S.R. § 112-18-11.4.1**

The Emergency Rule requires that nonpublic schools that are participating Education Service Providers must “[u]pon the request of the Board, ... provide the Board with written advance notice of any changes to the tuition or fee schedule that occur during the academic year.” (W.Va. CSR § 112-18-11.4.1) In this instance, the Department of Catholic Schools believes that the reference to “the academic year” in this sentence refers to changes would alter the tuition or fee schedule of an Education Service Provider for the “academic year” that such information was reported to the Hope Scholarship Board. If that is the intent, then:

**the Department of Catholic Schools recommends revising W.Va. C.S.R. § 112-18-11.4.1 to clarify the requirement and to read as follows:**

**11.4.1 Upon request of the Board, an authorized education service provider that is a nonpublic school must submit, within 20 days, a complete copy of its then current tuition and fee schedule to the Board. If the Board has requested a copy of the tuition and fee schedule under this Section, any changes to the same that would alter tuition and fees for the same academic year when the request was made, shall be reported to the Board prior to the effective date of the change.**

This change should clarify that changes to the tuition and fee schedule of a non-public school that is an Education Service Provider are not required to be reported to the Board in advance if they will apply only to future academic years (absent another request from the Board under W.Va. C.S.R. § 112-18-11.4.1).

**3. W.Va. C.S.R. § 112-18-11.7**

Section 11.7 of the Emergency Rule states:

**11.7 As required in W.Va. Code § 18-31-10, an education service provider must submit to any audit initiated by the Board related to Hope Scholarship Funds. Upon request, the education service provider must provide the Board with access to all records related to Hope Scholarship students or funds.**

The Department of Catholic Schools suggests that the last sentence of Section 11.7 is too broad and could be interpreted to require the disclosure of student records that may go far beyond the Hope Scholarship Board’s interest in ensuring that Hope Scholarship funds are being spent for appropriate qualified expenses.

For example, “records relating to Hope Scholarship students” may include personal health records, discipline records, test scores and academic transcripts, records related to participation in extracurricular activities (like waivers for field trips, permission slips, sports records, etc.), immunization records, HIPPA-protected health information, and any number of other records related

to a particular student. At best, these records are unrelated to auditing the appropriate expenditure of Hope Scholarship funds, and in some instances they may run into conflict with other duties a private or parochial school owes to a student by law or under contract (such as privacy concerns).

Therefore, the Department of Catholic Schools recommends that the second sentence of Section 11.7 of the Emergency Rule be revised to read as follows:

Upon request, the education service provider must provide the Board with access to records necessary to verify the expenditure of Hope Scholarship funds on qualifying expenses.

#### IV. Conclusion

The Department of Catholic Schools appreciates the engagement of the Hope Scholarship Board and the Treasurer's office on these matters. Moving forward Catholic Schools look to ensuring that, should they choose to attend a Catholic School, Hope Scholarship recipients receive a well-rounded, high quality education, that focuses not only on the development of intellect but on the formation of character.

Questions may be directed to me at the address below or phone number below.

Very Truly Yours,

Mary Ann Deschaine

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# HOPE SCHOLARSHIP BOARD --- WEST VIRGINIA

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April 20, 2022

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Ms. Deschaine:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. The Hope Scholarship Board has reviewed your comments and considered the effect on the proposed rule. Below you will find a summarization of the comments received and the Board's responses to those comments.

The Catholic Diocese ("the Diocese") suggested eliminating the language in subdivision 11.3.1.d. of the rule requiring a provider to agree that the "provider will not engage in unlawful discrimination in providing education services to Hope Scholarship students[.]" The Diocese expressed concern that the provision is unclear and may lead to unnecessary confusion with respect to the obligations of providers, based on the fact that many anti-discrimination laws applying to public schools do not apply in the private and parochial school context. Based on this comment, the Hope Scholarship Board ("the Board") has agreed to amend subdivision 11.3.1.d. to instead

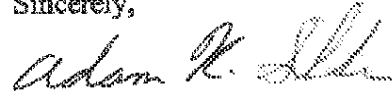
state that a provider must agree "[t]hat in providing educational services, the provider will not engage in unlawful discrimination according to state or federal law applicable to the provider." By clarifying that the agreement only contemplates applicable law, the new language ensures that providers will not be compelled to agree with any legal requirements that do not already apply to the provider. The Board declined to eliminate the language specifying that the agreement refers only to discrimination "in providing educational services to Hope Scholarship students," which the Diocese described as vague. The intent of the language is to ensure that the rules do not attempt to regulate activities outside of the scope of providing services to Hope Scholarship students (for example, non-school religious services occurring in a church that offers a private school), as the permissible scope of the rule is limited to the Hope Scholarship Program. Additionally, the Board declined to include language suggested by the Diocese stating that "neither the Emergency Rule, nor the contract with providers referenced in W.Va. CSR § 112-18-11.3, may be construed to require a participating school or Education Service Provider to alter its creed, practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose parents pay tuition or fees from a Hope Scholarship." West Virginia Code § 18-31-11(d) specifically provides that "[a] participating school or education service provider is not required to alter its creed, practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose parents pay tuition or fees from a Hope Scholarship[.]" Based on the existing statutory guarantee, there is no need to insert the identical language into the rule.

The Diocese suggested clarifying language in subsection 11.4.1. of the rule relating to tuition and fee schedules. After discussing the public comments regarding tuition and fee schedules with the Board's program manager, all education service providers receiving Hope Scholarship funds will be required during the onboarding process to provide tuition and fee schedules so that parents can transparently shop and compare pricing for any services they wish to purchase. Therefore, the Board has amended subsection 11.4.1. of the rule to clarify that tuition and fee schedules of all education service providers will be required.

The Diocese suggested the last sentence of section 11.7. could be broadly interpreted to require access to records that go beyond the Board's interest in ensuring Hope Scholarship funds are being spent on qualified expenses. The Board agreed with this public comment and amended the language to incorporate the alternative language suggested by the Diocese.

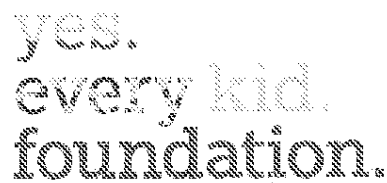
Thank you again for your thoughtful review and submission of comments to the Hope Scholarship Board.

Sincerely,



Adam Shuemaker

Secretary, Hope Scholarship Board



March 11, 2022

Mr. James G. Fuerhoff  
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Dear Mr. Fuerhoff,

On behalf of yes. every kid. foundation I am pleased to offer our perspective on the proposed legislative rule to govern the Hope Scholarship Program. yes. every kid. foundation is an organization that believes in empowering every student to pursue the best possible education so that every child can discover their talents and passions, develop knowledge and skills, and apply their aptitudes. To achieve this, public policy must ensure every learner is able to customize and individualize their educational experience.

West Virginia policymakers signaled their support for empowering families and students last year with the passage and enactment of the Hope Scholarship Program. This transformational policy grants West Virginia families and students the flexibility to choose the educational options that work best for them. This flexibility is evidenced in the ability for a Hope Scholarship student to participate in public school classes, extracurricular activities and programs because it should not be the case that exclusion from public school offerings is a result of participation in the Hope Scholarship Program. We also commend the forward-looking, elastic nature of the rules surrounding qualified expenses. In particular, the authority conferred in §112-18-9.2.15 to allow “[a]ny other qualifying expenses as approved by the Board.” This acknowledgment that enshrining too much rigidity in the rule would be a disservice to the program is something that will surely serve recipients and providers well in the future.

In many cases, the proposed legislative rules are functions of the governing statute. As a result, only certain portions of the rules are additive to the statutory requirements. But in those cases where the rules exceed the statutory provisions, the language should be as



permissive as possible without imposing additional burdens on program participants and providers. Simply put, when the rules go beyond statute, it should be for the benefit of users.

We wish to highlight several specific components of the proposed Legislative Rule:

#### Program participation renewal

In regards to scholarship recipients who intend to remain in the program, the statute provides that “[n]otwithstanding any changes in eligibility, a Hope Scholarship student who has previously qualified for a Hope Scholarship account remain eligible to apply for renewal until one of the conditions set forth in §18-31-6(f) occurs.” (§18-31-8(a)). Proposed rule §112-18-4.2.1 makes reference to “...filing a renewal application on a form prescribed by the Board according to the requirements of this section.” With the aim of ensuring ease of continuity for Hope Scholarship students, perhaps a simple confirmation on the part of an account holder that the student remains eligible would meet the requirement of annual renewal.

#### Application window

The application process views students as three different groups:

1. Incoming kindergarteners (§112-18-3.1.4.a.)
2. Those who spent at least the prior instructional term in a public school (§112-18-3.1.4.b.)
3. Students enrolling in a public school to get the 45-day requirement (§112-18-3.1.4.c.)

Groups Nos. 1 and 2 are required to apply between March 1 and May 15 (§112-18-4.1.2.).

Given that the statute provides, “[t]hat the amount of the funding to an eligible recipient who is awarded a Hope Scholarship account for less than a full fiscal year shall be prorated based on the portion of the fiscal year the eligible recipient is awarded the Hope Scholarship account (W. Va. §18-31-6(b)), the application period could be expanded, possibly to even the entire year. There would continue to be a built-in incentive to apply by May 15<sup>th</sup> in order to receive the total available amount and not a lesser, *pro prated* sum.

#### Individualized instructional program definition

In both the bill and the rules, an “individualized instructional program” is referenced. However, the term is not defined. The rules would benefit from clarity on this point.

#### Types of curriculum or supplemental materials that can be purchased

§112-18-9.2.2. delineates “[t]uition and fees for programs of study, curriculum, or supplemental materials in reading, math, science, social studies, or the arts” as a qualifying expense. We suggest considering eliminating the underlined portion. If a parent wishes to purchase a specific cookbook for their child because their child has a passion for cooking or a book on local hiking trails as part of a project to map out routes on the trails and collect garbage to beautify the environs, it could be argued that both of these expenditures, while certainly contributing to the educational experiences of those children, would potentially be impermissible under the current language.

The statutory requirement that parents “provide an education...in at least the subjects of reading, language, mathematics, science, and social studies” (§18-31-5(d)(1)(a)) refers to the entirety of the child’s educational experience – not a limit on what a parent can provide their child overall. In fact, a subsequent subsection speaks to the need for parents to “afford the Hope Scholarship student opportunities for educational enrichment such as organized athletics, art, music, or literature” (§18-31-5(3)(D)).

#### County superintendent notification

Rule §112-18-3.4 requires that “a parent must provide notice of intent to participate in the Hope Scholarship Program to the county superintendent of the Hope Scholarship student’s county of residence.” If possible, we suggest exploring streamlining the application process so as to automate the transmittal of the notice of intent to the county superintendent. This way it is not an additional burden to the family but rather a function of the application process. In any instance where action is required on the part of a county, the rules could include a required response time would be advisable and, if no response is received then the student is approved. Similar language currently in the statute stipulates that “if the (West Virginia Department of) [E]ducation does not reply within 30 days, this criteria is considered satisfied” (§18-31-5(5)(B)).

### Authorized Account Holders

Rule §112-18-5 refers to “Authorized Account Holders” who are the legal authority to act on behalf of a scholarship student. Rule §112-18-5.1.1 acknowledges that a “biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a Hope Scholarship student” is “eligible to serve as account holder.” This section could possibly be altered to recognize *any* parent as an authorized account holder.

### Allocation and Distribution of Funds

In the statute, §18-31-9.3(c) directs the Board to implement “a commercially viable, cost-effective, and parent-friendly system for payments for services from Hope Scholarship accounts to participating schools or education service providers, including, but not limited to, the use of debit cards or other electronic or online fund transfers.” Rule §112-18-7.2 requires all transactions to “be completed electronically using the online portal.” This rule could be broadened to encapsulate the various possibilities envisioned by the statute so that the Board could adopt an alternative system it found preferable if one were to present itself in the future.

I do not believe it is lost on anyone what a herculean effort it has taken on the part of countless individuals to successfully launch the Hope Scholarship Program and promulgate these rules. The thanks of those students who have already applied and the many West Virginians who will benefit in the future go out to Treasurer Riley Moore, the staff of the Treasurer’s Office, the Hope Scholarship Board, the Subcommittee on Legislative Rules and the policymakers who through the establishment of this program illustrated their belief that families and students should be entrusted and empowered to chart their own educational course.

Cordially,

Andrew E. Nelms, Governmental Affairs Manager

yes. every kid. Foundation

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# HOPE SCHOLARSHIP BOARD WEST VIRGINIA

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April 20, 2022

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Mr. Nelms:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. The Hope Scholarship Board has reviewed your comments and considered the effect on the proposed rule. Below you will find a summarization of the comments received and the Board's responses to those comments.

Yes Every Kid inquired whether continued eligibility to participate in the Hope Scholarship Program could be considered meeting the annual renewal requirement. The Hope Scholarship Board ("the Board") believes automatically renewing eligible students for the Hope Scholarship without confirming with a parent/guardian that they wish to remain a Hope Scholarship student could create confusion. The Board made no changes to the rule as a result of this public comment.

Yes Every Kid inquired whether the application window in the rule could be expanded, possibly to even the entire year. While the legislative rules do operate under an application window, the Board has also permitted for students that become eligible for the Hope Scholarship Program outside of the application window or students who missed the application window but are otherwise eligible for the program, to apply at any time during the academic year. The Board believes the current rule structure provides flexibility to parents and students to apply for the Hope Scholarship, and therefore, has made no changes to the rule as a result of this public comment.

Yes Every Kid suggested the Board add a definition of "individualized instructional program". The Board agreed with this recommendation and incorporated a definition of "individualized instructional program" in section 2.16. of the rule.

Yes Every Kid expressed concern as to whether the qualifying expenses section of the rule would make certain expenditures impermissible. Yes Every Kid suggested striking language in subsection 9.2.2. of the rule to broaden expenses outside of the subject matters of reading, mathematics, science, social studies, or the arts. The Board agreed with the need to clarify items in the qualified expenses section of the rule to permit expenses for educational enrichment. Therefore, the Board has agreed to amend the rule by adding an additional subsection in 9.2.16. that reads as follows:

"9.2.16. Tuition and fees for programs of study, curriculum, or supplies needed for supplemental or elective educational courses;"

Yes Every Kid inquired whether the Hope Scholarship Board could automate the transmittal of the notice of intent to the county superintendent. Currently, the Hope Scholarship Board does not have this functionality to facilitate an automated process mentioned above. However, the Board may explore the utility into this functionality for future academic years. At this time, the Board has made no changes to the rule as a result of this public comment.

Yes Every Kid inquired whether the list of persons eligible to be an authorized account holder could be amended to recognize any parent as an authorized account holder. The Board believes the current list of eligible individuals outlined in subsection 5.1.1. of the rule is the appropriate list, as it incorporates additional individuals that may be responsible for a student's educational program. Therefore, the Board has made no changes to the rule as a result of this public comment.

Yes Every Kid inquired whether the rule could be amended to encapsulate other transaction methods outside of electronic payment processing using the online portal. While section 7.2. of the rule and subsection 8.1.1. of the rule requires all Hope Scholarship transactions to be completed electronically using the online portal, the Board did contemplate other payment options as outlined in subsection 8.1.2. of the rule when it permitted reimbursement of funds that can be approved on a case by case basis in the event parents must purchase qualifying expenses outside of the electronic portal. The Board believes the current rule structure provides the appropriate balance of flexibility and fraud prevention controls. Therefore, the Board has made no changes to the rule as a result of this public comment.

Thank you again for your thoughtful review and submission of comments to the Hope Scholarship Board.

Sincerely,



Adam Shuemaker  
Secretary, Hope Scholarship Board

## Hope Scholarship Draft Rules Feedback/ Questions from Families

### Submitted to the WV Families United for Education

#### §112-18-2 Definitions

My one concern is the process for submitting an option outside of an approved service provider. We follow the Montessori Method in our home and will be using this scholarship to help us afford materials and printables for our homeschool. We get materials from Kid Advance (a larger supplier), small shops, books from Amazon or other books stores and then do printables from different shops and print them at UPS store currently. I then cut and prep (sometimes laminating when necessary). I have prepared my list of materials and am working on a budget for next year that I can supply (with where we would purchase each material, printable, book, etc). Would this fall under curriculum or service provider? We are very hands on and this will continue through upper elementary. I also may purchase additional albums or educational materials for myself (this is the closest thing to traditional curriculum in the Montessori world)- would this fall under curriculum? It is my understanding that classes or field trips would fall under the service provider category, is this correct?

#### §112-18-4 Applications

Unless I missed it, it doesn't seem that the draft rules talk about the 45 day time window that the Treasurer's office has from the receipt of application until an award letter has to be issued, assuming the applicant meets all eligibility requirements. The law is black and white here (except it doesn't qualify calendar days), so I'm not sure if this is a big deal or not.

Another question - if an applicant doesn't become eligible per the 45 day rule until later in the school year, where their 45th day on the calendar is basically at the end of the public school year term (early June?), does the 45 days allowed by law for the approval letter to come to the applicant count days in the "summer months" when public students are on summer break? I would assume the student would still be considered enrolled in the public school, even if they're on summer break. This also makes sense given the provided definition for "academic year" provided in the draft rules extending all year between July 1 and June 30. This would mean such a student would be eligible, awarded, and good to go for Hope schooling when things start up in late August.

I don't have any questions on this section. I approve of the application process as outlined in the draft. As long as that did not change, it sounds fair, reasonable and in line with the law that has been passed.

#### §112-18-9 Qualifying Expenses

I think the draft rules do a decent job of outlining qualifying expenses. One question we have had just between my wife and I is about items needed based on educational choice made. Here's an example - we may sign our son up for an online academy, virtual school. A computer is required for that, and I'm not too keen on having him use my computer that runs household finances, etc. Would a laptop, etc., be considered a qualifying expense if required for their educational choice?

#### §112-18-11 Provider Eligibility

I listed what we would be using the funds for in my question under 112-18-2 Definitions. That said, would I need to get all these different shops/vendors to file for this? Unfortunately it seems unlikely that they would want to do this for a couple students. (One right now and two in the future). If the materials fall

under this category, would there be a way to approve the expense and receive reimbursement personally? To clarify, the expense is approved but the vendor doesn't make application so I would personally purchase, save receipt, and then receive reimbursement. It sounds like that is not an option...

### **Other Questions**

Due to the current lawsuit against the Hope Scholarship bill, can the committee please address retroactive eligibility. Will the "eligible students" in the original application date range 3/1-5/15/22 receive payment for 2022-23 school year once the lawsuit had been settled if approved to go forward or will new dates be implemented once bill is clear to start?

As mentioned before, the only other questions we have are in regards to the pending lawsuit, which has nothing to do with these draft rules.

In the draft it does not change any of the testing or tracking requirements for a homeschooler under West Virginia law (nor did the law that was passed for HOPE). As long as this does not change, this would be of interest and be a huge benefit for our family. We are a one income household that lives very much within our means and this would be a blessing for our homeschool journey.

# HOPE SCHOLARSHIP BOARD --- WEST VIRGINIA

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April 20, 2022

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(304) 237-5292

Ms. Buckland:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. The Hope Scholarship Board has reviewed your comments and considered the effect on the proposed rule. Below you will find a summarization of the comments received and the Board's responses to those comments.

The first comment posed questions about potential supplies being qualified expenses. The Treasurer's Office recommends amending the rule to clarify that curriculum and supplies necessary for an educational program are qualified expenses. The Hope Scholarship Board ("the Board") wishes to bring all participating vendors that seek to receive Hope Scholarship funds into the EMA portal. Although subsection 8.1.2 of the rule allows reimbursement of qualified expenses on a case by case basis, the Board strongly encourages account owners to utilize the portal for purchases whenever possible. All reimbursement documentation must be submitted to the Board and final approval rests with the Board. Additionally, items such as educational books and materials would be qualified expenses under the program. The Board has amended the rule to clarify that curriculum and supplies necessary for an educational program are qualified expenses.

The second comment inquired about the 45 day time window that the Board has from receipt of an application to issue an award letter. The statutory language is clear and is duplicative to put into the rules as well. The Board made no change to the rule as a result of this comment.



The next comment posed questions regarding the 45 day requirement as it relates to award letters. A student that is eligible for the Hope Scholarship Program at the time of application will be accepted and an award letter will be issued within 45 calendar days. The statute does not prohibit an award letter from being issued during the summer months of a calendar year. However, a student cannot use summer school to become eligible for the Hope Scholarship Program under the 45 calendar day requirement. The definition of instructional term was updated to make it clear that only the 180 days of the regular instructional term can be used to meet the 45 calendar day requirement.

The next comment inquired whether a laptop would be considered a qualifying expense.. A laptop that is being used for educational purposes would be an allowable qualified expense. The Board has amended the rule to clarify that technology equipment necessary for an educational program is a qualified expense.

The next comment inquired about reimbursements for qualified expenses. The Hope Scholarship Board wishes to bring all participating vendors that seek to receive Hope Scholarship funds into the EMA portal. Although subsection 8.1.2. of the rule allows reimbursement of qualified expenses on a case by case basis, the Board strongly encourages account owners to utilize the portal for purchases whenever possible. All reimbursement documentation must be submitted to the Board and final approval rests with the Board. Additionally, items such as educational books and materials would be qualified expenses under the program. The Hope Scholarship Board has made no change as a result of this public comment.

The next comment inquired how the current lawsuit against the Hope Scholarship bill would affect retroactive eligibility. The Board cannot speculate as to how pending litigation could affect the Hope Scholarship Program.

The final comment inquired whether the testing or any other requirements changed for home school students under the Hope Scholarship Act. Because students utilizing an individualized learning program are not considered home school students under the Hope Program, those students are not subject to the same rules and regulations as homeschool students. Requirements specific to homeschool assessments and progress reporting are provided in W. Va. Code §18-31-8(a)(4). The Board made no change to the rule as a result of this public comment

Thank you again for your thoughtful review and submission of comments to the Hope Scholarship Board.

Sincerely,



Adam Shucknake  
Secretary, Hope Scholarship Board

## Fuerhoff, James

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**From:** jalme@pdc9.org  
**Sent:** Tuesday, March 8, 2022 11:25 AM  
**To:** Fuerhoff, James  
**Subject:** [External] Public Comments for the Hope Scholarship

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**CAUTION:** This e-mail originated from outside of the WVSTO. Please exercise caution.

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Mr. Fuerhoff:

My name is Jaime. I just have some thoughts, here is my story. I know there are so many families like my own who all have this concern. My son is 9 struggling with ADHD. My Daughter is 7. Last year I chose to put my daughter in Mercer Christian Academy. 2 Years ago I enrolled my son. I chose to enroll my son because of his ADHD. Public school was too crowded and a very hard environment for a neurodivergent child. He cannot tolerate sounds or noises. MCA has a very small student: teacher ratio. This made a huge difference in the way my son was learning. I enrolled my daughter the next year. I believe she should be able to have the same opportunity as my son. Public school is lacking in so many areas. My children were not benefitting. I am just a mother who wants her children to have the best education I can provide for them in a more wholesome environment. I have a bachelor's of the arts degree in social science and was pursuing my masters in social work up until recently. I just cannot afford to finish right now. I am passionate about helping others, especially those that have no support system or means of helping themselves. I feel as if the 45 day enrollment in a public school is basically saying " oh, your children are already enrolled in private school so you must not need help?" Well I am here to tell you. I STRUGGLE..... I pay roughly \$4,600/ year per child to attend MCA. This is not including paying for meals and fees. Since I can't afford to make monthly payments of \$600 throughout the year I use my Income tax refund to pay their tuition. When I first heard of the HOPE Scholarship program I was excited thinking I would at least get some help even if it's paying for the books. I was disheartened to learn this only helps those who were enrolled in public school for at least 45 days or approaching kindergarten. So if I take out my children and put them in public school for 45 days then re-enroll them in MCA I will get the assistance? I feel like this is equal to "playing the system" and I just don't agree with that. In addition my child cannot mentally handle being pulled here and there. I feel like this is typical WV legislature. There are many families I see getting this scholarship that are VERY well off financially. Yet, we that work hard and are contributing to society but barely making ends meet once again get the short end of the stick. It is always the ones that have too much or the ones that don't "want" to be a contributing member of society getting all the perks. Us families that are in the middle get nothing. WV is also a state that lacks any type of tax incentives for private schooling. I feel myself along with other parents that are struggling but have their children in private school feel cheated. All we want is every child to have the SAME opportunities. I do not feel this was a well thought out program and I feel this is wrong and discriminatory. Are there any other private scholarships that could help families like us who are just stuck in the middle? Thank you for your time and consideration in this matter. God Bless.

Jaime Arnold  
Public Defender Corp.  
Legal Secretary  
Phone: 304-487-2543 x. 4  
Cell: 304-716-2249

# HOPE SCHOLARSHIP BOARD WEST VIRGINIA

State Capitol, Room E-145 • 1000 Kanawha Boulevard East • Charleston, WV 25305  
(304) 541-6725 | [hope@hopescholarship-wv.com](mailto:hope@hopescholarship-wv.com)

April 20, 2022

Ms. Jamie Arnold

[jarnold@axis2.org](mailto:jarnold@axis2.org)

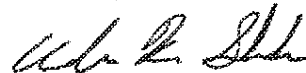
Ms. Arnold:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. The Hope Scholarship Board has reviewed your comments and considered the effect on the proposed rule. Below you will find a summarization of the comments received and the Board's responses to those comments.

Ms. Arnold expressed concerns with the 45 day requirement to be eligible for the Hope Scholarship. Current public-school students, incoming kindergarten students, and any student that is enrolled in public school for at least 45 days at the time of application are eligible to receive the Hope Scholarship. The Hope Scholarship Board is statutorily charged with the implementation and administration of this program. The Board has no ability to alter the Hope Scholarship Act and is not in a position to comment on public policy decisions outside of implementations of the Act. The Hope Scholarship Board recommends no change to the rule as a result of this public comment.

Thank you again for your thoughtful review and submission of comments to the Hope Scholarship Board.

Sincerely,



Adam Shuemaker  
Secretary, Hope Scholarship Board